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No. 87-——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

FINA OIL AND CHEMICAL COMPANY, *et al.*,
Petitioners,

v.

EL PASO NATURAL GAS COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

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QUESTION PRESENTED

Whether an interstate natural gas pipeline company can utilize an incorrect application of federal law governing natural gas, and a misconstruction of this Court's interpretation of such federal law in *Public Service Comm'n of New York v. Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983), to destroy Petitioners' property interests in natural gas producing properties operated by the pipeline, which interests were recognized and preserved by a prior final holding of the United States Court of Appeals for the Fifth Circuit.

LIST OF PARTIES TO THE PROCEEDING*

The Petitioners joining in this petition for a writ of certiorari are:

Charles W. Colwill
Anne Home Emerson, Trustee
Fina Oil and Chemical Company
Anna Lou Home
Teresa Home
Jean E. Keyser
Cassandra Keyser
Barron Kidd
Morris and Flora Mizel
Sun Exploration and Production Company
and
Helen Ulmer Van Atta

The Respondent is El Paso Natural Gas Company

---

*Petitioners are of the belief that only those parties joining in this petition for writ of certiorari as listed above retain any interest in the outcome of this proceeding. A list of the defendants/appellees in the Court of Appeals for the First Supreme Judicial District of Texas, the petitioners for writ of error in the Supreme Court of Texas, and the respondents in the Supreme Court of Texas is printed at App. 63a-67a.

RULE 28.1 LISTING

The following is a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of Petitioner FINA OIL AND CHEMICAL COMPANY:

American Petrofina, Incorporated
Petrofina Delaware, Incorporated
American Petrofina Exploration Company
American Petrofina Holding Company
Petrofina, S.A.
Comanche Springs Fuel Center, Incorporated
Petro-Phenix, Incorporated
Dal-Fin, Incorporated
Finachem Sales Corporation
Cos-Mar, Incorporated
Cape Industries
Harcofina
The K-T Oil Corporation

The following is a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of Petitioner SUN EXPLORATION AND PRODUCTION COMPANY:

Sun Company, Inc.
Blackfeet Indian Writing Company, Inc.
National Railway Utilization Corporation
Lavan Petroleum Company (LAPCO)
Japan Sun Oil Company, Ltd.
Alaska Bulk Carriers, Inc.
Glacier Bay Transportation Corporation
Northbrook Corporation
Oil Insurance Limited
Convenience Store Distributing Company
Price River Water Users Association
The Wellington Canal Company
Canyon Reef Carriers, Inc.
East Texas Salt Water Disposal Company
Sun Energy Partners, L.P.
Van Salt Water Disposal Company
Hemisphere Oil Company, Inc.
Sun Hydroponics Limited

Deepsea Ventures, Inc.
Ocean Mining Associates
Liberian International American
Explorer Pipeline Company
Inland Corporation
Mid-Valley Pipeline Company
Industries for Tulsa, Inc.
West Texas Gulf Pipe Line Company
China Sun Oil, Ltd.
Sunolin Chemical Company
White River Shale Oil Corporation
The VLM Corporation
Suncor Inc.
Albersun Pipeline Ltd.
Athabasca Realty Company Limited
Baron Petroleums Inc.
Carnduff Gas Limited
GOW Fuels Inc.
Maywelle Properties Ltd.
Nottingham Gas Limited
Oulmet-Gobeille Inc.
Pacgas Limited
Redwater Water Disposal Company Limited
SMS Petroleums Ltd.
Sultran Ltd.
Sun Oil Company of Canada Limited
Sun-Canadian Pipe Line Company Limited
Suncor Supply Limited
Sunoco Home Comfort Inc.
Muskoka Oil Company Limited
Sunoco Inc.
Chemsum Inc.
Fair Wind Shipping Inc.
Solartech Limited
Sunchem Inc.
Sunchem (U.K.) Limited
Trillium Exploration Corporation
Lugrasa, S.A.
Petromech SDN. BHD.
Venezoil C.A.

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OCTOBER TERM, 1987

No. 87-——

FINA OIL AND CHEMICAL COMPANY, *et al.*,
Petitioners,

v.

EL PASO NATURAL GAS COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Supreme Judicial District of Texas ("Texas Court of Appeals") in No. 01-84-00350-CV issued on August 7, 1986.

OPINIONS BELOW

The opinion of the Texas Court of Appeals is reported at 733 S.W.2d 541 (Tex. App.-Houston [1st Dist.] 1986, writ ref'd n.r.e.), and is printed at Appendix (App.) 1a-28a. The Texas Court of Appeals affirmed in part, and reversed in part, a judgment of the 11th Judicial District Court of Harris County, Texas ("Texas District Court") in No. 83-50539. A copy of the unreported opinion of the Texas District Court is printed at App. 41a-49a. The Supreme Court of Texas denied Petitioners'

application for a writ of error "N.R.E." (no reversible error) by an unreported order printed at App. 37a-38a, and Petitioners' motion for rehearing by an unreported order printed at App. 39a-40a.

JURISDICTION

The judgment of the Texas Court of Appeals was entered on August 7, 1986. App. la. The Supreme Court of Texas denied Petitioners' application for a writ of error on July 8, 1987, and denied Petitioners' motion for rehearing on September 16, 1987. App. 37a, 39a.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) (1982).

STATUTORY PROVISION INVOLVED

Section 104 of the Natural Gas Policy Act of 1978, 15 U.S.C. § 3314 (1982), sets forth the statutory ceiling price for the sale of natural gas committed or dedicated to interstate commerce prior to the enactment of the NGPA. Section 104 of the NGPA is printed at App. 68a-69a.

STATEMENT OF THE CASE

This controversy involves the efforts of Respondent, an interstate natural gas pipeline company, to implement a rate structure under the Natural Gas Policy Act, 15 U.S.C. §§ 3301 *et seq.* (1982) ("NGPA"), that could be utilized in the state courts of Texas to terminate Petitioners' royalty interests in certain natural gas producing properties operated by the Respondent. Respondent incorrectly claimed in the proceedings before the Texas courts that such rates were *required* under the NGPA and this Court's landmark decision in *Public Service Comm'n of New York v. Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983) (hereinafter *Mid-Louisiana*), even where the result of the rate change is to *reduce* the maximum lawful price applicable to the gas in question.

This controversy also involves a final decision of the United States Court of Appeals for the Fifth Circuit. This decision determined that Petitioners have a valid right under federal law to maintain their royalty interests in the properties at issue. *El Paso Natural Gas Co. v. Sun Oil Co.*, 708 F.2d 1011 (5th Cir. 1983), *cert. denied*, 468 U.S. 1219 (1984) (hereinafter *Sun Oil*).

In holding for Respondent, the Texas Court of Appeals erroneously interpreted the NGPA and *Mid-Louisiana*, and determined that Petitioners' royalty interests could be terminated, contrary to the prior holding in *Sun Oil*.

1. Background Of The Agreements At Issue And The *Sun Oil* Litigation

The royalty interests at issue exist under four similar gas lease agreements (GLA's) entered into between Petitioners and Respondent in the early 1950's. Pursuant to the GLA's, Respondent obtained from Petitioners or their predecessors-in-interest certain leasehold interests in lands located in the "Four Corners" region of New Mexico.

The GLA's conveyed undeveloped acreage to Respondent. Respondent received the working interest right to explore for, develop and produce natural gas on that acreage. In consideration, Petitioners received an overriding royalty on the gas produced from the acreage. These royalties were not expressed as a percentage of the value of the gas. Rather, the overriding royalties were established in terms of cents per thousand cubic feet (MCF) of gas produced on the GLA properties, subject to escalation as provided by the agreements.[1]

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[1] A general description of the GLA's is set forth by the United States Court of Appeals for the Fifth Circuit in *Sun Oil*, 708 F.2d at 1013-16. A more detailed explanation of the background and intended operation of the GLA's is included in the federal district court decision affirmed in *Sun Oil*. *See* El Paso Natural Gas Co. v. Sun Oil Co., 426 F. Supp. 963 (W.D. Tex. 1977).

Respondent instituted the litigation that culminated in the Fifth Circuit's *Sun Oil* decision in September of 1973 in United States District Court for the District of Columbia. This action was initiated to forestall the efforts of numerous royalty owners to obtain an increase in the royalty payments due pursuant to the terms of the GLA's. In particular, Respondent sought to have the royalty owners declared to be sellers of gas subject to federal pricing restrictions under the Natural Gas Act, 15 U.S.C. §§ 717 *et seq.* (1982) ("NGA").[2] Respondent also initiated a proceeding at the Federal Power Commission ("FPC") seeking the same result. *See Sun Oil*, 708 F.2d at 1014.

During the pendency of the *Sun Oil* litigation, Petitioners and Respondent under each GLA entered into identical settlement agreements (the "1974 Settlement Agreements") which resolved all issues under the GLA's, including the amount of the royalty to be paid, other than the issue of Natural Gas Act jurisdiction. App. 52a-62a. The 1974 Settlement Agreements generally set the royalty to be paid at a rate equal to the highest rate of general applicability prescribed by the FPC, less seven cents. *See* App. 54a; *See also* 733 S.W.2d at 546, App. 6a. The FPC subsequently held that the royalties paid pursuant to the 1974 Settlement Agreements were reasonably and prudently incurred costs and that Respondent was entitled to include these costs in its rates in all subsequent rate proceedings. *El Paso Natural Gas Co.*, 57 F.P.C. 989, 999 (1977).

In February 1977, following a transfer of the case from the United States District Court for the District

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[2] By having the overriding royalty owners declared to be jurisdictional sellers of gas, the amounts payable under the GLA's would be subject to ceiling rates established by the FPC for independent-producers of natural gas. Because these rates were lower than the amount El Paso owed in royalties for GLA production, El Paso would be able to acquire gas for less by "purchasing" the GLA gas rather than by producing such gas and paying royalties on that production. *See Sun Oil*, 708 F.2d at 1014.

of Columbia, the United States District Court for the Western District of Texas concluded that Petitioners were not engaged in jurisdictional sales of gas. *El Paso Natural Gas Co. v. Sun Oil Co.*, 426 F. Supp. 963 (W.D. Tex. 1977). However, in subsequent litigation before the Federal Energy Regulatory Commission (the "FERC" or "Commission"), litigation also initiated by Respondent, the Commission concluded that the overriding royalty owners were indeed jurisdictional sellers of gas. *El Paso Natural Gas Co.*, 12 F.E.R.C. (CCH) ¶ 61,297 (1980).

On July 5, 1983, after a review of the merits of the United States District Court's decision and the inconsistent decision of the FERC, the United States Court of Appeals for the Fifth Circuit held in *Sun Oil* that the overriding royalty owners, including Petitioners, were *not* making sales of gas subject to FERC jurisdiction. Accordingly, the court reversed the FERC order and affirmed the judgment of the United States District Court. The Fifth Circuit concluded that Petitioners, as royalty owners, were not subject to federal pricing limitations and were therefore "entitled to the rate provided in the contracts." 708 F.2d at 1016. This Court subsequently denied Respondent's petition for writ of certiorari, *sub nom.*, in *California v. Tenneco Oil Co.*, 468 U.S. 1219 (1984).

2. The NGPA And Respondent's Initiation Of The Proceedings Below

On August 1, 1983, less than three weeks after the Fifth Circuit's decision in *Sun Oil*, and prior to this Court's denial of the petitions for a writ of certiorari, Respondent initiated the proceeding below in the District Court for Harris County, Texas. In this litigation, Respondent claimed that the NGPA, enacted nearly five years before, had given rise to a right to reassign the interests held by Respondent under the GLA's to Peti-

tioners, thereby destroying Petitioners' royalty interests under the GLA's. Respondent based its claim on this Court's landmark *Mid-Louisiana* decision. Specifically, Respondent claimed that the NGPA, as interpreted by *Mid-Louisiana*, forced Respondent to *lower* the rates that Respondent could collect for production from the GLA properties to a level less than the royalty payments to Petitioners.

This result occurred, Respondent claimed, because *Mid-Louisiana* compelled it to change its cost-based rates ("cost-of-service pricing"), which included Petitioners' royalty payments as a cost, to the NGPA-specified prices applicable to independent-producers ("producer-parity pricing"). Based on this erroneous predicate, Respondent claimed the right to terminate Petitioners' royalty interests by reassignment of the GLA properties to Petitioners under so-called "unprofitability" and "noncommercial acreage" clauses contained in the GLA's. Respondent argued that such clauses were triggered because its former cost-of-service rates included the overriding royalties payable to Petitioners, but its new producer-parity rates did not.

Petitioners contested Respondent's interpretation of the NGPA and *Mid-Louisiana* in the proceedings below. The Petitioners showed, and the Texas District Court so found, that neither the NGPA nor *Mid-Louisiana* required that El Paso abandon cost-of-service pricing as to the GLA properties. App. 47a. Rather, Petitioners demonstrated that Respondent's action was simply part of a corporate plan to maximize profits utilizing a rate filing purportedly compelled by *Mid-Louisiana*. Respondent's plan included the utilization of its *Mid-Louisiana* rate implementation as a basis for extinguishing Petitioners' royalty rights under the GLA's. Based on Respondent's publicly filed documents and internal studies, the Texas District Court issued findings that Respondent contem-

plated a net increase in corporate revenues, based upon its proposed implementation of *Mid-Louisiana*, of $3.8 billion over twenty years. But Respondent could increase its net realization from the change to $4.6 billion if Respondent could utilize *Mid-Louisiana* to terminate its royalty obligations to Petitioners. App. 50a-51a.

The Texas District Court rejected Respondent's construction of the NGPA and *Mid-Louisiana* and held that Respondent did not have the right to terminate Petitioners' royalty interests by reassignment of the GLA properties. App. 41a.

The Texas Court of Appeals reversed the trial court's findings and conclusions of law as to the interpretation and application of the NGPA and *Mid-Louisiana*. The Texas Court of Appeals incorrectly held that under *Mid-Louisiana*, the producer prices specified by Title I of the NGPA, 15 U.S.C. §§ 3311-3333 (1982), constituted the maximum amount that Respondent could collect in its rates, absent special relief authorization from the FERC for a higher rate. 733 S.W.2d at 545-46, App. 4a, 6a. Thus, the Texas Court of Appeals held that Respondent properly abandoned cost-of-service pricing and implemented producer-parity pricing, predicated upon its conclusion that the NGPA and *Mid-Louisiana* required identical pricing for pipeline and independent-producer production.

Based upon its erroneous construction of federal law, the Texas Court of Appeals reversed the Texas District Court as to Respondent's right to reassign the GLA properties under the "unprofitability" and "noncommercial acreage" clauses in the GLA's. 733 S.W.2d at 555-56, App. 28a. Thereafter, the Supreme Court of Texas denied Petitioners' application for writ of error and motion for rehearing. App. 37a, 39a.

REASONS FOR GRANTING THE WRIT

This case presents a question of exceptional importance concerning the interpretation of the NGPA. The resolution of this issue by the Texas Court of Appeals below would deprive Petitioners of valuable contract and property rights and would permit Respondent to reap improper profits. This result arises solely because of the Texas Court of Appeals' misconstruction of both the NGPA and this Court's landmark decision in *Mid-Louisiana.*

The parties and the courts below agree that pipeline-production is subject to NGPA pricing. This is the holding of *Mid-Louisiana.* The critical issue, however, involves pipeline-production that falls within section 104 (a) of the NGPA, *i.e.*, gas that was committed or dedicated to interstate commerce before the NGPA was enacted and as to which a just and reasonable cost-of-service rate under the Natural Gas Act was in effect.

As to this gas, which includes Respondent's pipeline-production subject to the GLA's, section 104(b)(1) of the NGPA provides that the maximum lawful price shall be "*the just and reasonable rate . . .* established by the Commission which was (or would have been) *applicable to . . . such natural gas on April 20, 1977.*" 15 U.S.C. § 3314 (b)(1)(A)(i) (1982) (emphasis added). The Texas Court of Appeals erroneously interpreted the emphasized language to refer to lower *producer* prices in effect on April 20, 1977, rather than any higher just and reasonable cost-of-service rates in effect on such date. 733 S.W.2d at 546, App. 6a.

1. The Texas Court Of Appeals' Decision Erroneously Interprets The NGPA, As Demonstrated By *Mid-Louisiana* And Other Federal Authority

The construction of the NGPA and *Mid-Louisiana* asserted below by Respondent and accepted by the Texas Court of Appeals is wrong as a matter of law. The same

issue, the appropriate pricing of pipeline production under section 104 of the NGPA, was recently addressed in *Public Utilities Comm'n of California v. FERC*, 817 F.2d 858 (D.C. Cir. 1987) (hereinafter *California v. FERC*).

In *California v. FERC*, the United States Court of Appeals for the District of Columbia Circuit addressed the issue of whether, pursuant to NGPA section 104, Respondent was required to abandon cost-of-service pricing and adopt producer-parity rates. In considering this issue, the D.C. Circuit rejected the position of Respondent as adopted by the Texas Court of Appeals below. Specifically, *Mid-Louisiana* did *not* require that Respondent abandon cost-of-service rates and adopt rates applicable to independent-producers. As stated by the D.C. Circuit in *California v. FERC*:

> [T]he Supreme Court's *Mid-Louisiana* decision did not *mandate* parity pricing treatment of pipeline-producer and independent-producer gas. Rather, as our court pointed out [in *Phillips Petroleum Co. v. FERC*, 792 F.2d 1165 (D.C. Cir. 1986)], the Supreme Court in *Mid-Louisiana* explicitly assumed that the [Natural Gas Act] reference point for pipeline prices under the NGPA would be derived from old cost-of-service levels, not the national levels applicable to independent producers.

817 F.2d at 864.

Based on *Mid-Louisiana*, as applied in *California v. FERC*, the D.C. Circuit remanded matters related to Respondent's implementation of NGPA pricing in its rates for reconsideration by the FERC.[3] *Id.*

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[3] El Paso's implementation of producer-parity prices is subject to the outcome of any Commission order implementing *Mid-Louisiana*. El Paso Natural Gas Co., 24 F.E.R.C. (CCH) ¶ 61,390 (1983). Subsequent to *California v. FERC*, the Commission issued Order No. 391-B, 40 F.E.R.C. (CCH) ¶ 61,174 (1987), which permits

[Footnote Continued]

Similarly, in *Columbia Gas Development Corp. v. FERC*, 651 F.2d 1146 (5th Cir. 1981) ("Columbia Gas"), the Fifth Circuit stated that the NGPA "incorporates and carries forward all prior FPC rate orders."[4] As discussed *infra* p. 4, Respondent had already received FPC authorization to collect its royalty payments made pursuant to the GLA's in its cost-of-service rates.[5] Under *Columbia Gas*, (and *California v. FERC*), Respondent's NGPA rate on the GLA gas was its cost-of-service rate, which included royalty payments to Petitioners.

The fundamental error of federal law committed by the Texas Court of Appeals is shown by contrasting the holdings in *California v. FERC* and *Columbia Gas* with the following discussion of *Mid-Louisiana* by the Texas court:

> The U.S. Supreme Court in *Public Service Commission v. Mid-Louisiana Gas Co.*, 463 U.S. 319, decided on June 28, 1983, *held that the maximum lawful prices fixed in the NGPA* applied to intracorporate transfers from the production department of a pipeline to the distribution department and *fixed the amount which could be passed through by the pipeline to its customers* as its cost of acquisition.
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pipeline-producers to *raise* prices to NGPA Section 104 ceiling rates. Order No. 391-B does not, however, specifically address the issue of pipeline-producers abandoning prior cost-of-service rates and adopting the *lower* section 104 rate to avoid contractual obligations. On October 7, 1987, the Commission granted rehearing of Order No. 391-B for the purpose of further consideration. 52 Fed. Reg. 37,928 (Oct. 13, 1987).

[4] *See also* Kentucky-West Virginia Gas Co., 21 F.E.R.C. (CCH) ¶ 61,251 at 61,552 (1982) ("[Cost of service] treatment was continued by the FERC under the NGPA").

[5] As of April 20, 1977, El Paso had been authorized in its future rate cases to include the royalties paid Petitioners in its just and reasonable rates. *See* El Paso Natural Gas Co., 57 F.P.C. 989 (1977).

> [At the time this case was tried] $3.35 per MMBtu was the price at which the royalty payable [to Petitioners] was computed. [El Paso's] GLA wells were either [NGPA] section 104 or section 103 wells. *The maximum price at which gas produced from section 104 wells could lawfully be sold was .85 [sic] cents per MMBtu. The maximum price at which gas produced from section 103 wells could lawfully be sold was $2.85 per MMBtu.* Those facts demonstrate that *El Paso paid to the defendants more in overriding royalties* on gas produced from GLA wells *than it could lawfully charge its customers* for the gas produced from those wells.

733 S.W.2d at 545-46 (emphasis added), App. 4a, 6a.

Contrary to the holding of the Texas Court of Appeals, the maximum rates under *Mid-Louisiana* were not the producer-parity prices quoted. In fact, the Texas Court of Appeals' interpretation of section 104 directly contradicts this Court's statement in *Mid-Louisiana* that "[u]nder § 104, such gas retains its former NGA price, subject to increases over time for inflation." 463 U.S. at 342-43. As shown by *California v. FERC* and *Columbia Gas*, and as construed by this Court in *Mid-Louisiana*, Congress' intent with respect to section 104 was to carry forward the former NGA cost-of-service price on pipeline production, unless the gas qualified for higher incentive rates established by other pricing categories in the NGPA.[6]

2. The Profits That Would Be Achieved By Respondent Further Demonstrate The Conflict With *Mid-Louisiana*

The record in this case demonstrates that Respondent's substitution of producer-parity pricing for its just and reasonable cost-of-service rates was intended to enhance

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[6] Pipeline-production may qualify for producer-parity rates higher than the pipelines cost-of-service rate "if it falls within one of the special categories of gas whose production Congress saw a need to stimulate." *Mid-Louisiana*, 463 U.S. at 343.

the profitability of the interstate pipeline. Further, by utilizing its producer-parity rate implementation as the basis for extinguishing its royalty obligations to Petitioners in the Texas courts, Respondent sought further to increase the profitability of the pipeline. As found by the Texas District Court, Respondent expected to increase its net revenues by $3.8 billion through the implementation of producer-parity pricing, and to increase this amount to $4.6 billion if it could also extinguish Petitioners' royalty rights. App. 50a-51a.[7]

In *Mid-Louisiana*, the Court clearly contemplated that subjecting pipeline production to NGPA pricing would not provide a means for additional profit, except to the extent the production qualified for the higher incentive rates provided by the NGPA. *Mid-Louisiana*, 463 U.S. at 341-43. Neither the NGPA nor *Mid-Louisiana* permits a pipeline to *reduce* its former NGA cost-of-service rate in order to capture additional profits through the elimination of royalty obligations.[8] The Texas Court of Appeals' decision would allow Respondent to enjoy extraordinary profits beyond any amount intended by *Mid-Louisiana*, as found by the Texas District Court and acknowledged by the Texas Court of Appeals. 733 S.W.2d at 551, App. 18a-19a. This result is clearly inconsistent with the NGPA and *Mid-Louisiana*.

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[7] Respondent contemplated such profits because changing from cost-of-service pricing to producer-parity pricing *increased* the rates Respondent could collect above its costs for most properties. Respondent would realize the incremental amount (the difference between $3.8 billion and $4.6 billion) if it could also utilize producer prices to terminate its royalty costs to Petitioners in the litigation below, and capture the resulting difference beween producer prices and its reduced costs of operation as additional profit.

[8] If the cost-of-service rate established for such gas and carried forward by section 104 is higher than any otherwise applicable producer-parity rate, section 101(b)(5) of the NGPA requires application of the section 104 cost-of-service rate. *See* 15 U.S.C. § 3311(b)(5) (1982) ("[T]he provision which could result in the highest price shall be applicable").

3. Granting The Writ Will Preserve The Integrity Of Petitioners' Contract Rights And Property Interests As Intended By *Sun Oil*

As shown above, Respondent's goal of realizing significant additional profits by abandoning cost-of-service rates applicable to production from the GLA properties in favor of producer-parity pricing is contrary to the NGPA and the expressed intent of this Court in *Mid-Louisiana*. In addition, Respondent's effort to deprive Petitioners of valuable property rights under the GLA's contradicts the prior holding of the Fifth Circuit in *Sun Oil*.

In 1983, following years of litigation before the United States District Court, the FERC and the United States Court of Appeals for the Fifth Circuit, Petitioners' contract and property rights under the GLA's were vindicated. The Fifth Circuit found, after a complete review of the agreements and the merits of the litigation, that the Petitioners were entitled to receive the consideration bargained for under the GLA's. *Sun Oil*, 708 F.2d at 1016. This Court found no reason to alter the decision of the Fifth Circuit and denied all petitions for writs of certiorari. *California v. Tenneco Oil Co.*, 468 U.S. 1219 (1984).

The erroneous application of federal law by the Texas Court of Appeals should not be permitted to upset the holding in *Sun Oil*. Petitioners respectfully urge the Court to grant this petition for a writ of certiorari in order to preserve Petitioners' rights and the integrity of the holding in *Sun Oil*.

CONCLUSION

Certiorari is appropriate where a state court decision conflicts with a federal court of appeals on a matter of federal law. *See, e.g., Edward Katzinger Co. v. Chicago Metallic Mfg. Co.*, 329 U.S. 394 (1947); *MacGregor v. Westinghouse Electric & Mfg. Co.*, 329 U.S. 402 (1947).

Certiorari is also appropriate where necessary to determine whether a state court has properly applied a prior Supreme Court decision. *See, e.g., Hankerson v. North Carolina*, 432 U.S. 233 (1977). In this controversy, both of these criteria have been met. The holding of the Texas Court of Appeals below is inconsistent with the NGPA as construed in this Court's landmark decision in *Mid-Louisiana*. Unless corrected, Respondent will realize extraordinary profits, contrary to the expressed intent of this Court. Further, Petitioners will be deprived of their valuable rights under the GLA's which were recognized and preserved by the Fifth Circuit in *Sun Oil*.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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